IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.1528 OF 2004

S.D.Industries through
its partner T.R.K.Menon .. Petitioner

Versus

Shethia Crane Hiring Company .. Respondent

Mr.B.G.Tangsali for petitioner
Mr.S.K.Shetty i/b. Shetty & Associates for respondent No.1
Mr.R.Y.Mirza, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 8th December 2005.

P.C.

. Mr.Tangsali appearing for petitioner raised two fold contentions. He states that complaint was not maintainable because even for a complaint alleging offence under section 138 of Negotiable Instruments Act to be maintained, complainant firm must be registered and in that behalf he relies upon section 69(2) of the Partnership Act. Second contention is that cheques were given as and by way of security and not in discharge of any liability of firm.

2. In my view, on such contentions neither the proceedings can be quashed nor they should be stayed by this Court in exercise of its inherent powers. All such contentions touch the merits of matter and, therefore, it would be open for the petitioner to urge before the trial court that cheques were not in discharge of any liability but as and by way of security.

3. As far as the contention that the

complaint itself is not maintainable, the same is not substantiated either by section 138 or by section 69(2) of the Act. Admittedly, these are proceedings alleging offence which is because a cheque is returned by the banker unpaid. The term company appearing in section 141 has been defined as including body corporate and a firm or assoiciation of individuals. That it is not registered in terms of the requirements stipulated in that behalf under Partnership Act would not affect maintainability of complaint. Petition dismissed. Hearing of criminal complaint is expedited.

(S.C.DHARMADHIKARI, J)